

## Fishery Conservation and Management

## § 665.816

(iii) Capable of flapping and retracting both wings to normal folded position on its back;

(iv) Able to stand on both feet with toes pointed forward; and

(v) Feathers are dry.

(9) Any seabird that is released in accordance with paragraph (b)(8) of this section or under the guidance of a veterinarian must be placed on the sea surface;

(10) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water; and

(11) Complete the short-tailed albatross recovery data form issued by NMFS.

(c) Non-short-tailed albatross seabird handling techniques. If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(2) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the seabird;

(4) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(5) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(6) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(7) After recovered, release seabirds by placing them on the sea surface.

### § 665.816 American Samoa longline limited entry program.

(a) *General.* Under § 665.801(c), certain U.S. vessels are required to be registered for use under a valid American Samoa longline limited access permit. With the exception of reductions in permits in vessel size Class A under

paragraph (c)(1) of this section, the maximum number of permits will be capped at the number of initial permits actually issued under paragraph (f) of this section.

(b) *Terminology.* For purposes of this section, the following terms have these meanings:

(1) Documented participation means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

(i) Ownership of a vessel that was used to fish in the EEZ around American Samoa, or

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest western Pacific pelagic MUS in the EEZ around American Samoa. If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa (*e.g.*, creel survey record or logbook), the applicant may issue a request to PIRO to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow PIRO to retrieve the records.

(2) Family means those people related by blood, marriage, and formal or informal adoption.

(c) Vessel size classes. The Regional Administrator shall issue American Samoa longline limited access permits in the following size classes:

(1) Class A: Vessels less than or equal to 40 ft (12.2 m) LOA. The maximum number will be reduced as Class B-1, C-1, and D-1 permits are issued under paragraph (f)(5) of this section.

(2) Class B: Vessels over 40 ft (12.2 m) to 50 ft (15.2 m) LOA.

(3) Class B-1: Maximum number of 14 permits for vessels over 40 ft (12.2 m) to 50 ft (15.2 m) LOA, to be made available according to the following schedule:

(i) Four permits in the first calendar year after the Regional Administrator

has issued all initial permits in Classes A, B, C, and D (initial issuance);

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus four additional permits;

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first eight, plus four additional permits; and

(iv) In the fourth calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first 12, plus two additional permits.

(4) Class C: Vessels over 50 ft (15.2 m) to 70 ft (21.3 m) LOA.

(5) Class C–1: Maximum number of six permits for vessels over 50 ft (15.2) to 70 ft (21.3 m) LOA, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance;

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits; and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(6) Class D: Vessels over 70 ft (21.3 m) LOA.

(7) Class D–1: Maximum number of 6 permits for vessels over 70 ft (21.3 m) LOA, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance;

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits; and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(d) A vessel subject to this section may only be registered with an American Samoa longline limited access permit of a size class equal to or larger than the vessel's LOA.

(e) Initial permit qualification. Any U.S. national or U.S. citizen or company, partnership, or corporation qualifies for an initial American Samoa longline limited access permit if the person, company, partnership, or corporation, on or prior to March 21, 2002, owned a vessel that was used dur-

ing the time of their ownership to harvest western Pacific pelagic MUS with longline gear in the EEZ around American Samoa, and that fish was landed in American Samoa:

(1) Prior to March 22, 2002; or

(2) Prior to June 28, 2002, provided that the person or business provided to NMFS or the Council, prior to March 22, 2002, a written notice of intent to participate in the pelagic longline fishery in the EEZ around American Samoa.

(f) Initial permit issuance.

(1) Any application for issuance of an initial permit must be submitted to PIRO no later than 120 days after the effective date of this final rule. The Regional Administrator shall publish a notice in the FEDERAL REGISTER, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of the availability of permits. Applications for initial permits must be made, and application fees paid, in accordance with §§ 665.13(c)(1), 665.13(d), and 665.13(f)(2). A complete application must include documented participation in the fishery in accordance with § 665.816(b)(1). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers.

(2) Only permits of Class A, B, C, and D will be made available for initial issuance. Permits of Class B–1, C–1, and D–1, will be made available in subsequent calendar years.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries, PIRO, shall make a decision on whether the applicant qualifies for an initial permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel, of the equivalent size class or smaller to which the qualifying vessel would have belonged, to the permit within 120 days of the date of the letter of notification, and maintain this vessel registration to the permit for at least 120 days. The successful applicant

must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(4) An appeal of a denial of an application for an initial permit shall be processed in accordance with § 665.801(o) of this subpart.

(5) After all appeals on initial permits are concluded in any vessel size class, the maximum number of permits in that class shall be the number of permits issued during the initial issuance process (including appeals). The maximum number of permits will not change, except that the maximum number of Class A permits will be reduced if Class A permits are replaced by B-1, C-1, or D-1 permits under paragraph (h) of this section. Thereafter, if any Class A, B, C, or D permit becomes available, the Regional Administrator shall re-issue that permit according to the process set forth in paragraph (g) of this section.

(g) Additional permit issuance.

(1) If the number of permits issued in Class A, B, C, or D, falls below the maximum number of permits, the Regional Administrator shall publish a notice in the FEDERAL REGISTER, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of any available permit(s) in that class. Any application for issuance of an additional permit must be submitted to PIRO no later than 120 days after the date of publication of the notice on the availability of additional permits in the FEDERAL REGISTER. A complete application must include documented participation in the fishery in accordance with § 665.816(b)(1). The Regional Administrator shall issue permits to persons according to the following priority standard:

(i) First priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class A sized vessel.

(ii) The next priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class B size, Class C size, or Class D size vessel, in that order.

(iii) In the event of a tie in the priority ranking between two or more applicants, the applicant whose second documented participation in the pelagic longline fishery in the EEZ around American Samoa is first in time will be ranked first in priority. If there is still a tie between two or more applicants, the Regional Administrator will select the successful applicant by an impartial lottery.

(2) Applications must be made, and application fees paid, in accordance with §§ 665.13(c)(1), 665.13(d), and 665.13(f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included. If the successful applicant fails to register a vessel to the permit within 120 days of the date of the letter of notification, the Assistant Regional Administrator for Sustainable Fisheries shall issue a letter of notification to the next person on the priority list or, in the event that there are no more

prospective applicants on the priority list, re-start the issuance process pursuant to paragraph (g)(1) of this section. Any person who fails to register the permit to a vessel under this paragraph (g)(3) within 120 days shall not be eligible to apply for a permit for 6 months from the date those 120 days expired.

(4) An appeal of a denial of an application for a permit shall be processed in accordance with § 665.801(o).

(h) Class B-1, C-1, and D-1 Permits.

(1) Permits of Class B-1, C-1, and D-1 will be initially issued only to persons who hold a Class A permit and who, prior to March 22, 2002, participated in the pelagic longline fishery around American Samoa.

(2) The Regional Administrator shall issue permits to persons for Class B-1, C-1, and D-1 permits based on each person's earliest documented participation, with the highest priority given to that person with the earliest date of documented participation.

(3) A permit holder who receives a Class B-1, C-1, or D-1 permit must relinquish his or her Class A permit and that permit will no longer be valid. The maximum number of Class A permits will be reduced accordingly.

(4) Within 30 days of receipt of a completed application for a Class B-1, C-1, and D-1 permit, the Regional Administrator shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(5) An appeal of a denial of an application for a Class B-1, C-1, or D-1 permit shall be processed in accordance with § 665.801(o).

(6) If a Class B-1, C-1, or D-1 permit is relinquished, revoked, or not renewed pursuant to paragraph (j)(1) of this section, the Regional Administrator shall make that permit available according to the procedure described in paragraph (g) of this section.

(i) Permit transfer. The holder of an American Samoa longline limited access permit may transfer the permit to another individual, partnership, corporation, or other entity as described in this section. Applications for permit transfers must be submitted to the Regional Administrator within 30 days of the transfer date. If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers. After such an application has been made, the permit is not valid for use by the new permit holder until the Regional Administrator has issued the permit in the new permit holder's name under § 665.13(c).

(1) Permits of all size classes except Class A. An American Samoa longline limited access permit of any size class except Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A western Pacific community located in American Samoa that meets the criteria set forth in § 305(I)(2) of the Magnuson-Stevens Act, 16 U.S.C. § 1855(I)(2), and its implementing regulations, or

(ii) Any person with documented participation in the pelagic longline fishery in the EEZ around American Samoa.

(2) Class A Permits. An American Samoa longline limited access permit of Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A family member of the permit holder,

(ii) A western Pacific community located in American Samoa that meets the criteria set forth in § 305(I)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855, and its implementing regulations, or

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(iii) Any person with documented participation in the pelagic longline fishery on a Class A size vessel in the EEZ around American Samoa prior to March 22, 2002.

(3) Class B-1, C-1, and D-1 Permits. Class B-1, C-1, and D-1 permits may not be transferred to a different owner for 3 years from the date of initial issuance, except by bequest or intestate succession if the permit holder dies during those 3 years. After the initial 3 years, Class B-1, C-1, and D-1 permits may be transferred only in accordance with the restrictions in paragraph (i)(1) of this section.

(j) Permit renewal and registration of vessels.

(1) Use requirements. An American Samoa longline limited access permit will not be renewed following 3 consecutive calendar years (beginning with the year after the permit was issued in the name of the current permit holder) in which the vessel(s) to which it is registered landed less than:

(i) For permit size Classes A or B: a total of 1,000 lb (455 kg) of western Pacific pelagic MUS harvested in the EEZ around American Samoa using longline gear, or

(ii) For permit size Classes C or D: a total of 5,000 lb (2,273 kg) of western Pacific pelagic MUS harvested in the EEZ around American Samoa using longline gear.

(2) [Reserved]

(k) Concentration of ownership of permits. No more than 10 percent of the maximum number of permits, of all size classes combined, may be held by the same permit holder. Fractional interest will be counted as a full permit for the purpose of calculating whether the 10-percent standard has been reached.

(l) Three year review. Within 3 years of the effective date of this final rule, the Council shall consider appropriate revisions to the American Samoa limited entry program after reviewing the effectiveness of the program with respect to its biological and socioeconomic objectives, concerning gear

conflict, overfishing, enforceability, compliance, and other issues.

§ 665.817 [Reserved]

### § 665.818 Exemptions for American Samoa large vessel prohibited areas.

(a) An exemption will be issued to a person who currently owns a large vessel to use that vessel to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited management areas, if the person seeking the exemption had been the owner of that vessel when it was registered for use with a Western Pacific general longline permit, and has made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997.

(b) A landing of western Pacific pelagic MUS for the purpose of this section must have been properly recorded on a NMFS Western Pacific Federal daily longline form that was submitted to NMFS, as required in § 665.14.

(c) An exemption is valid only for a vessel that was registered for use with a Western Pacific general longline permit and landed western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, or for a replacement vessel of equal or smaller LOA than the vessel that was initially registered for use with a Western Pacific general longline permit on or prior to November 13, 1997.

(d) An exemption is valid only for the vessel for which it is registered. An exemption not registered for use with a particular vessel may not be used.

(e) An exemption may not be transferred to another person.

(f) If more than one person, *e.g.*, a partnership or corporation, owned a large vessel when it was registered for use with a Western Pacific general longline permit and made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, an exemption issued under this section will be issued to only one person.